UNITED STATES OF AMERIC BEFORE THE NATIONAL LABOR RELATIONS BOARD

WBI ENERGY, INC.

Employer

and

Case 27-RC-119907

SYSTEM COUNCIL U-27, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS Petitioner

ORDER

The Employer's Request for Special Permission to Appeal the Regional Director's Order Reopening Representation Hearing is granted, and the appeal is denied on the merits. The Employer's Motion to Transfer the Case to the Board is also denied.

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

Dated, Washington D.C., April 7, 2014

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¹The Regional Director did not abuse her discretion here. The Employer, citing Sec. 102.65(e)(1) of the Board's Rules & Regulations, contends that the Regional Director was not authorized to reopen the record, sua sponte, for the purpose of taking additional evidence pertaining to the petitioned-for unit and the related issue of single-employer status. That rule, however, by its terms pertains to parties, not to the Regional Director, who is ultimately responsible for ensuring that the record is full and complete. Inherent in that responsibility is the discretionary authority to reopen an incomplete record. Accordingly, Sec. 102.67(a) of the Rules specifies that "[t]he Regional Director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, *or further hearing, as he may deem proper*, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter." (emphasis added). Regional directors have exercised this authority in the past. See, e.g., *Musical Theater Association*, 221 NLRB 872, 872 fn.1 (1975). Further, our review of the parties' post-hearing briefs confirms that there is ample basis for seeking additional evidence on the issues specified by the Regional Director in this case.